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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ELECTRONIC FRONTIER FOUNDATION,	)	NO. C 07-5278 EMC
	)	
Plaintiff,	)	<b>DECLARATION OF MARCIA</b>
	)	<b>HOFMANN IN SUPPORT OF</b>
v.	)	<b>PLAINTIFF'S APPLICATION FOR</b>
	)	<b>ORDER SHORTENING TIME FOR</b>
OFFICE OF THE DIRECTOR OF NATIONAL	)	<b>HEARING ON PLAINTIFF'S MOTION</b>
INTELLIGENCE,	)	<b>FOR A PRELIMINARY INJUNCTION</b>
	)	
Defendant.	)	Courtroom:
	)	
	)	
	)	

1. I am an attorney of record for Plaintiff Electronic Frontier Foundation ("EFF") in this matter and a member in good standing of the California State Bar, and am admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration. If called

1 upon to do so, I am competent to testify to all matters set forth herein.

2       2. This declaration is submitted in support of EFF's Application for an Order Shortening  
3 Time to have its Motion for a Preliminary Injunction heard by this Court on November 20, 2007, or  
4 as soon thereafter as possible.

5       3. In this Freedom of Information Act ("FOIA") action, EFF seeks records from the  
6 Office of the Director of National Intelligence ("ODNI") related to efforts by the agency and  
7 telecommunications companies to lobby for changes to the Foreign Intelligence Surveillance Act  
8 ("FISA"), particularly to ensure that telecommunications carriers will not be held accountable for  
9 their participation in an unlawful electronic surveillance program conducted by the government.  
10 This lawsuit seeks to compel ODNI to process the requested records expeditiously under the FOIA  
11 because they involve a matter about which there is an "urgency to inform the public about actual or  
12 alleged Federal Government activity," and they are sought by "a person primarily engaged in  
13 disseminating information." ODNI has conceded that EFF's FOIA requests satisfy this statutory  
14 standard, and are legally entitled to expedited processing. Notwithstanding ODNI's purported  
15 decision to expedite the processing of EFF's FOIA requests, however, the agency has to date  
16 neither completed the processing of EFF's requests, nor informed EFF of an anticipated date for  
17 the completion of the processing of the requests.

18       4. A hearing before this Court on shortened time is necessary because two pieces of  
19 legislation recently introduced in Congress may imminently amend the FISA: the RESTORE Act  
20 of 2007, H.R. 3773, and the Foreign Intelligence Surveillance Act of 1978 Amendments Act of  
21 2007, S. 2248. The Senate bill, which was introduced and approved on October 18, 2007 by the  
22 Senate Select Committee on Intelligence, purports to require dismissal of any state or federal  
23 lawsuit against a carrier for facilitation of government surveillance if the Attorney General certifies  
24 to the court that the company was assisting in certain intelligence activity authorized by the  
25 President. Senate Majority Leader Harry Reid has publicly indicated that he expects the bill to  
26 reach the Senate floor by mid-November. The legislative process is unpredictable, and the Senate  
27 bill may be delayed for a variety of reasons. However, we anticipate that Congress will make a  
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1 final decision on the proposed legislation—including the immunity provision—extremely soon, as  
2 it is intended to replace the Protect America Act of 2007, Pub. L. No. 110-55, 121 Stat. 552, which  
3 will expire in February 2008 in the absence of congressional action.

4 5. A hearing on shortened time is necessary also because EFF's repeated efforts to  
5 negotiate a production schedule with ODNI have been unsuccessful. On October 22, 2007, I  
6 phoned Andrew I. Warden, Trial Attorney at the Department of Justice, and informed him that EFF  
7 had filed the complaint in this matter on October 17, 2007. Mr. Warden is counsel in a similar but  
8 unrelated lawsuit between EFF and the Department of Justice currently pending in the District  
9 Court for the District of Columbia, *Electronic Frontier Foundation v. Dep't of Justice*, No. 07-  
10 1732 (D.D.C. filed Sept. 27, 2007). Mr. Warden told me that he anticipated that he would be  
11 counsel for Defendant in this action and had obtained a copy of the October 17, 2007 complaint.

12 6. During this conversation, I told Mr. Warden that EFF wanted to explore the possibility  
13 of negotiating a processing schedule for EFF's FOIA requests to eliminate the need for further  
14 action in this case. I explained, however, that legislation had been introduced and approved on  
15 October 18, 2007 in the Senate Select Committee on Intelligence that was closely related to the  
16 subject matter of the records underlying this case. I told Mr. Warden that this development has  
17 significantly increased the urgency for the public to obtain the records sought from ODNI, and that  
18 EFF would consider seeking preliminary injunctive relief in the absence of an agreement to process  
19 EFF's requests in a timely manner. Mr. Warden told me he would consult with his client.

20 7. On October 24, 2007, Leticia Perez, Legal Secretary for EFF, served copies of the  
21 complaint, summonses, and orders of this Court via certified mail on Defendant ODNI, as well as  
22 the United States Attorney General and United States Attorney for the Northern District of  
23 California, as required by Fed. R. Civ. P. 4(i)(1)(a)-(c). United States Postal Service records  
24 indicate that United States Attorney General and United States Attorney for the Northern District  
25 of California have accepted the service mailings, though Defendant ODNI's package has not yet  
26 been delivered. *See* Proof of Service Decl. of Marcia Hofmann and exhibits thereto.

27 8. On October 25, 2007, I sent Mr. Warden an email reiterating EFF's willingness to  
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1 discuss a mutually agreeable production schedule for its FOIA requests. In light of the legislation  
2 pending in the Senate, however, I told Mr. Warden that EFF intended to seek preliminary relief in  
3 this case if the parties could not reach an agreement on the processing of EFF's requests by  
4 Monday, October 29, 2007. I received no response to this email.

5 9. On October 26, 2007, I conferred with Mr. Warden by phone and informed him of my  
6 intention to move for a preliminary injunction and to seek an order for shortened time to hear the  
7 motion if EFF and ODNI had not reached an agreement by Monday, October 29, 2007. During  
8 that conversation, Mr. Warden did not agree to a hearing of the Motion for Preliminary Injunction  
9 on the expedited schedule proposed by EFF, and that ODNI would decide whether to oppose the  
10 Application for Order Shortening Time after it had an opportunity to evaluate the underlying  
11 motion. Mr. Warden also said that ODNI intends to decline to proceed before Magistrate Judge  
12 Chen and request reassignment of the case to an Article III judge. I have had no further  
13 discussions with Mr. Warden.

14 10. Attached is a proposed order granting this application. EFF respectfully requests that  
15 the Court set the following expedited briefing and hearing schedule: ODNI's Opposition to EFF's  
16 Motion for a Preliminary Injunction will be filed no later than November 9, 2007; EFF's Reply to  
17 ODNI's Opposition to EFF's Motion for a Preliminary Injunction will be filed no later than  
18 November 14, 2007; and the Court's hearing on EFF's Motion for a Preliminary Injunction will be  
19 held November 21, 2007, at 10:30 a.m. This proposal is based on Magistrate Judge Chen's civil  
20 calendar. We anticipate that this case will be reassigned to an Article III judge based on  
21 Defendant's stated unwillingness to consent to a magistrate. If so, we would like a hearing date on  
22 November 20, 2007 or as soon thereafter as is practicable on the assigned judge's calendar.

23 11. The parties have sought no previous time modifications in the case, either by  
24 stipulation or Court order.

25 12. The undersigned hereby certifies that the application for an order shortening time is  
26 made in good faith and for just cause.

1  
2 I declare under penalty of perjury of the laws of the State of California that the foregoing is  
3 true and correct to the best of my knowledge and belief. Executed October 29, 2007 in San  
4 Francisco, California.

5  
6 By \_\_\_\_\_/s/  
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